

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

HCP.No.2956 of 2015

Pappa

... Petitioner

Vs

1.The Secretary to the Government
Department of Consumer Affairs
Government of India, "Krishi Bhavan"
New Delhi 110 001.

2.The Secretary to the Government
Co-operation Food and Consumer
Protection Department, Secretariat
Chennai 600 009.

3.District Collector and
District Magistrate
Kancheepuram District
Kancheepuram.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of Habeas Corpus calling for the records in connection with the order of Detention passed by the third respondent 21.10.2015 in D.O.No.82/2015/M6 against the petitioner, S/o Vadivel @ Vadivelmurugan, male aged 24 years, S/o Chithambaram, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.S.Arockiam
CGSC for R1

Mr.A.N.Thambidurai
Additional Public Prosecutor
for RR2 and 3

ORDER

[Order of the court was delivered by S.NAGAMUTHU, J.]

The Petitioner, who is the mother of the detenu, viz., Vadivel @ Vadivel Murugan, son of Chithambaram, aged 24 years, has filed this petition challenging the order of detention passed by the 3rd respondent in D.O.No.82/2015/M6 dated 21.10.2015, branding her son as a "BLACK MARKETER" under Section 3[1] r/w 3[2][a] of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [Central Act 7 of 1980].

2. Even though the learned counsel for the petitioner raised many grounds in assailing the impugned order of detention in the petition, he confined his arguments only to the ground of delay in considering the representation of the detenu, dated 16.11.2015. According to the learned counsel for the petitioner, the representation, dated 16.11.2015, has been received by the Government on 23.11.2015; the remarks have been called for from the detaining authority on 25.11.2015 and the remarks have been received by the Government only on 17.12.2015, with a delay of twenty two days. He adds that the file was submitted to the Under Secretary on 23.12.2015 and further, the Minister has dealt with the said file of the detenu on 28.12.2015 and rejected on the same day. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were six intervening holidays including Government Holidays and even after giving concession as to the intervening holidays, still there is a delay of sixteen days, which remains unexplained. The unexplained delay in considering the representation of the detenu vitiates the detention order. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in *Rajammal vs. State of Tamil Nadu*, reported in (1999) 1 SCC 417.

3. Resisting the contention of the learned counsel for the petitioner, learned Additional Public Prosecutor submitted that the Government received the representation on 23.11.2015 and that was forwarded to the Detaining Authority, calling for remarks on 25.11.2015; the remarks were received by the Government 17.12.2015; ultimately, the representation was considered and rejected on 28.12.2015 and the result of the consideration was communicated to the detenu on 30.12.2015. Therefore, according to the learned Additional Public Prosecutor, there is no inordinate delay in considering the representation of the detenu and therefore, he prayed for dismissal of the petition.

4. We have considered the rival submissions carefully with regard to facts and citation and perused the materials available on record.

5. As per the Proforma submitted by the learned Additional Public Prosecutor, on the representation of the detenu, dated 16.11.2015, which was received by the Government on 23.11.2015, remarks have been called for from the detaining authority on 25.11.2015; the remarks have been received by the Government only on 17.12.2015, i.e., after a delay of twenty two days and the case of the detenu was dealt with by the Minister only on 28.12.2015 and rejected on the same day. From the above, it is clear that in between 25.11.2015 and 17.12.2015, [i.e., the intermittent days between the remarks called for and the remarks received], there is a delay of 22 days. Even if we give concession to the six intervening holidays including Government Holidays, namely 28.11.2015 ; 29.11.2015 ; 05.12.2015 ; 06.12.2015 ; 12.12.2015 ; and 13.12.2015 , still there is a delay of sixteen days, which remain unexplained.

6. It is trite law that the representation should be very expeditiously considered and disposed of with a sense of urgency and without avoidable delay. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. From the records produced, we find that no acceptable explanation has been offered for the delay of ten days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

7. In the judgment of the Hon'ble Supreme Court in Rajammal's case (cited supra), it has been held as follows:

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be " in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest."

8. As per the dictum laid down by the Supreme Court in above cited Rajammal's case, number of days of delay is immaterial and what is to be considered is whether the delay caused has been properly explained by the authorities concerned. But, here sixteen days delay has not been properly explained at all.

9.Further, in a recent decision in Ummu Sabeena vs. State of Kerala - 2011 STPL (Web) 999 SC, the Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on procedural safeguards. The expression 'as soon as may be', in Article 22(5) of the Constitution of India clearly shows the concern of the makers of the Constitution that the representation, made on behalf of the detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

10.In the light of the above fact and law, we have no hesitation in quashing the order of detention on the ground of delay on the part of the Government in disposing of the representation of the detenu.

11.Accordingly, the habeas corpus petition is allowed and the detention order dated 21.10.2015, passed by the 3rd respondent is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gms

To

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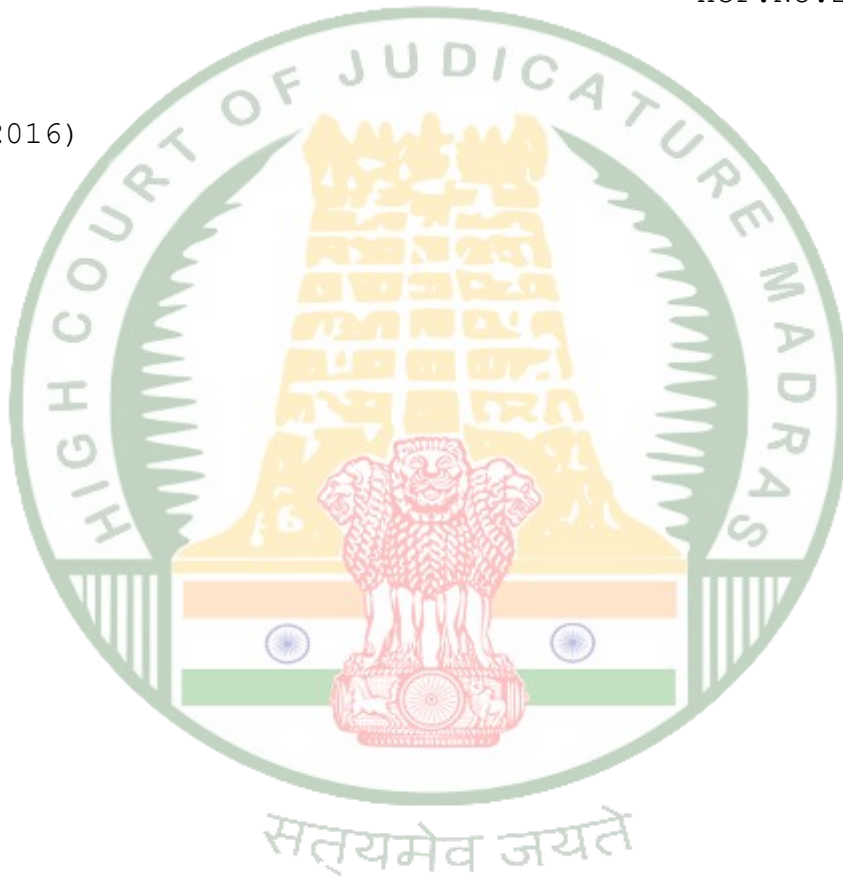
4.The Superintendent of Prison
Central prison, Vellore.

5.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

6.The Public Prosecutor,
High Court, Chennai.

HCP.No.2956 of 2015

KJI (CO)
CA(01/04/2016)



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